

REMARKS

This Response is submitted in response to the Office Action mailed on December 31, 2003. The Office Action rejects all of the pending claims either under 35 U.S.C. § 102 or § 103. Claims 1, 7, 13, 18, 20, and 26 have been amended. Applicants respectfully submit that the rejections have been overcome or are improper and based on a misapplication of the law to the facts. Applicants respectfully request that the Amendment be entered as it does not raise new issues. The Amendment does not add new matter.

For the most part, the rejections are substantially identical to the rejections that were issued in the previous Office Action. Applicants incorporate by reference their remarks from their previous Response. For the sake of brevity, Applicants will only address herein the Patent Office's response to Applicants' previous remarks and will not repeat the arguments that are incorporated by reference.

Claims 1-5, 7-11, 13-16, 18-20, 26, 29, 32, and 35 stand rejected as being unpatentable under 35 U.S.C. § 102 in view of *Simone*. Applicants pointed out in their previous response that *Simone* fails to disclose the recited density limitations of the product specifically set forth in independent Claims 7, 13, 18, and 20. Claims 8-11, 14-16, 18-19, 29, 32, and 35 depend from these claims. The Patent Office's response was that these features are not recited in each of the rejected claims. Applicants agree the density feature was not recited in each of the rejected claims, it is missing from Claims 1-5, and 26. However, with respect to the other rejected claims, 14 of the rejected 20 claims, this limitation is recited and the Patent Office has ignored this feature. In fact, as Applicants pointed out, *Simone* teaches away from this claimed feature. Therefore, clearly *Simone* does not anticipate Claims 7-11, 13-16, 18-20 and the rejection should be withdrawn.

With respect to independent Claim 1 and Claims 2-5, and 20 (which depend therefrom), these claims are allowable over *Simone* for the reasons set forth in Applicants' previous response. Applicants also disagree that the preamble is not entitled to patentable weight. Where it is necessary for the remaining portions of the claim, the preamble must be given weight. Here Applicants recite a pet food. Clearly, this limitation is necessary or the claim could cover any object on Earth including a protein source, carbohydrate source and insoluble fiber. Moreover, the density feature has been added to these claims.

Claims 7-9, 11-12, 18, 28-29, and 34-35 stand rejected under 35 U.S.C. § 102 in view of *Gellman*. Each of the claims requires that the product includes insoluble fiber. *Gellman* fails to disclose or suggest a product including insoluble fiber. The fact that *Gellman* suggests a product including fiber does not mean that the product includes insoluble fiber. Anticipation requires more than just probabilities. Therefore, this rejection is improper.

Claims 1-20, 21, 26, 29, 32, and 35 stand rejected under 35 U.S.C. § 102 as being anticipated by *Hand*. As Applicants noted in their previous response, *Hand* fails to disclose the density characteristics that are an element of each of independent Claims 7, 13, 18, and 20 and the claims that depend therefrom. *Hand* discloses a product that preferably has a density of 20-30 lbs/ft³. See column 4, line 66. As amended, the claims require a density of not greater than 20 lbs/ft³. Thus, as amended, *Hand* teaches away from the claimed invention as the preferred density is greater than 20 lbs/ft³. Likewise, as noted in Applicants' previous response, *Hand* fails to disclose other claimed elements. Therefore, Applicants respectfully submit that clearly *Hand* does not disclose nor suggest the claimed invention as amended.

Claims 21, 24-25, 27-28, 30-31, and 33-34 stand rejected under 35 U.S.C. § 102(e) as being anticipated by *Wang*. This rejection, Applicants respectfully submit, is clearly improper as it is incorrect as a matter of law. As Applicants previously noted, it is improper to reject a dependent claim as being anticipated if the independent claim is not anticipated. The Court of Appeals for the Federal Circuit specifically dealt with this issue years ago. It is improper to reject a dependent claim as lacking novelty or obviousness if the independent claim is not so rejected "because [the dependent claim] contains all of the limitations of [the independent] claim plus a further limitation." Hartness International Inc. v. Simplimatic Engineering Company, 819 F.2d 1100 (Fed. Cir. 1987) citing Panduit Corp. v. Dennison Mfg. Co., 810 F.2d 1561, 1576 (Fed. Cir. 1987).

The Patent Office states that it can reject the dependent claim as being anticipated even though the independent claim is not rejected because the relied upon reference is not eligible as prior art against the broader claim. Applicants do not believe that this alleged rule of law is correct but regardless, the *Wang* reference is, on its face, § 102(e) prior art against even the broader claims. Applicants' patent application claims priority from U.S. Patent Application Serial No.: 09/483,328, filed on January 14, 2000. The *Wang* reference was filed on December 20, 1999. Thus, it constitutes § 102(e) prior art to all of the claims on its face. Accordingly, not

only is the Patent Office misapplying the law with respect to anticipation, the alleged justification for what the Patent Office admits is "not a conventional format" is incorrect. Therefore, Applicants respectfully submit that the Patent Office withdraw the rejection of the claims as being anticipated by *Wang*.

In addition, the Patent Office has rejected Claims 1-6, 13-17, and 19-20 as being obvious and Claims 22-23 as being obvious. Once again, Applicants respectfully submit that these rejections are improper for the reasons previously given which, for the sake of brevity, will not be repeated. Moreover, in view of the amendments to the claims, it is clear that the cited references do not suggest the claimed invention.

Accordingly, for the foregoing reasons, Applicants respectfully request reconsideration of their patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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